

## Attachment D - Westport SMP Limited Amendment– Responsiveness Summary (State Comment Period 3/20/2013 to 4/19/2013)

ITEM	Topic or Section Number (cite)	Commenter	Specific Comment	Local Government Response and Rationale
<b>1</b>	Limited amendment	Jerome Parker	First, any cursory examination of appeals to the Hearing Examiners, at least in those counties of southern Puget Sound, will demonstrate that the overwhelming majority of decisions are in favor of developers and against citizens seeking environmental protection.	The concern is subjective and not based on the record of the City of Westport. The City has used the Hearing Examiner process since 2001 for land use matters including variances, plats and master plans. Since that time, only one decision has been appealed. It should be noted on that case an appeal was filed on all decisions of the City including the decisions of the Planning Commission and City Council to approve the Shoreline Substantial Development Permit. In another case, the Hearing Examiner approved a long subdivision application which was not appealed, however the approval by the Planning Commission and City Council of an associated Shoreline Substantial Development Permit was. For a number of years the Hearing Examiner decision was appealable to the City Council, however, with the exception of the case noted above, none have been appealed. The City hasn't received any complaints that the Hearing Examiner was biased towards developers in the period we have used them.
<b>2</b>	Limited Amendment	Jerome Parker	Whether this reflects the funding source for the Hearing Examiner or other factors is not clear but it should demand extreme caution be exercised in any effort to further increase the role of Hearing Examiners.	The Hearing Examiner is a contracted position with the City and is only paid for the services provided on each case. The fees are paid by the applicant and cover the cost of the actual services.
<b>3</b>	Limited Amendment	Jerome Parker	Second, permits are not strictly "quasi-judicial" matters. If they were, there would be little basis for appeal. There is considerable room in most appeals for interpretation of the provisions of the governing regulation. Decisions based on interpretation of such regulations should not be assigned to an unelected individual.	The City disagrees with the contention that Shoreline Permits are not "quasi-judicial" matters. This is not consistent with current state law. The Planning Commission and City Council have always been advised by legal council that their hearings are in fact "quasi-judicial" in nature and that they must make their decisions based on the Shoreline Master Program and the Municipal Code as they exist at the time the application was determined complete. Any deviation from the provisions of the code, or creative interpretation creates a much greater risk of the decision being overturned. Please see the response to the fourth point below (elected official versus unelected).
<b>4</b>	Limited Amendment	Jerome Parker	Third, experience suggests that in matters heard by a Hearing Examiner, litigants must first appeal to the Hearing	The concerns about the process identified in this item are the same regardless of whether a Hearing Examiner or Planning Commission

ITEM	Topic or Section Number (cite)	Commenter	Specific Comment	Local Government Response and Rationale
			Examiner and only after a decision has been rendered can those litigants appeal to Superior Court. Because any appeal of the Hearing Examiner decision can only be based upon the record established in the case before the Hearing Examiner, it is imperative that litigants retain competent legal advice before the Hearing Examiner. As a consequence, the litigants have another major cost hurdle in bringing a matter to appeal.	holds the hearing and makes the decision. Current state law allows for only one open record hearing and one closed record appeal on a matter. If the shoreline permit hearing is held by the Planning Commission that is the only open record hearing allowed by law. An appeal of that decision to the City Council would only be allowed to be based on the record established by the Planning Commission. An individual or organization would have to retain competent legal advice before the Planning Commission just the same as the Hearing Examiner. The City can't change this requirement, and approval of this limited amendment would not create an additional hurdle as the commenter describes.
5	Limited Amendment	Jerome Parker	Fourth, the reason that we elect public officials is that we can, thru the election process, hold them accountable. The public cannot hold a Hearing Examiner accountable. While the possible costs of litigation to local government may be a relevant consideration, the City needs to make a far stronger case that alternatives to a Hearing Examiner have been explored, e.g., litigation insurance, before surrendering citizen sovereignty to an insurance company.	The City disagrees with the contention that the Hearing Examiner process eliminates accountability to the electorate. The current Shoreline Master Program authorizes the Planning Commission to hold shoreline permit hearings and make decisions. The Planning Commission is appointed by the Council and not elected by the public. Approval of the limited amendment will simply replace an appointed (unelected) body with limited or no qualifications and experience with an appointed (unelected) official with substantial experience and will not reduce the public's access to their elected officials. The public will still be able to contact the Council concerning the conduct of the Hearing Examiner. The Council may at its discretion terminate the contract with the Hearing Examiner.
6	Limited Amendment	Jerome Parker	Finally, a decision by Ecology to allow this amendment might well establish precedent for similar amendments by other local governments unwilling to assume the risks of elective government.	The precedent for using professional Hearing Examiners has already been well established and the City does not believe the approval of this limited amendment will affect that precedence. The City does not believe that anyone; developer, opponent, or general government is best served by litigation over ancillary issues including appearance of fairness or creative interpretation that occur much more frequently with elected officials that have limited or no experience in land use matters versus a professional Hearing Examiner that does. This only delay's the final decision of the matter based on its merits and compliance with the law and wastes taxpayer dollars.
7	Limited Amendment	Sharon Coontz	Dear Mr. Mraz, I looked at the materials on the website	The attachments were provided with the original application and

ITEM	Topic or Section Number (cite)	Commenter	Specific Comment	Local Government Response and Rationale
			regarding the Westport request on SMP evaluations. The letter to you from the city indicates a number of attachments, including a letter from the Smith & Lowney law firm. I'm wondering how to access that and perhaps other comments. Thank you very much. Sharron (360-866-7596)	require no additional comments.
8	Limited Amendment	Sharon Coontz	I sent this message originally by clicking on your name within the text where it indicates you should be contacted with questions or problems with accessing materials. That link gives an out-of-date address for you and should be changed in the interest of public accessibility. Thanks, SC	This comment requires no response.
9	Limited Amendment	Tom Decker	I have perused much of the proposed change (and its history) of Westport Shoreline Master Program: Limited Amendment. I have come to the conclusion that it should not be approved. It is not in the best interest of the citizens of Westport to create another "hire" with absolute authority for rejection with an appeal process straight to superior court.	While the City respects the commenter's opinion we disagree with his description of the Hearing Examiner. First, the Examiner is not a full time hired position but a contract position that is only paid for actual services rendered hearing matters referred to him/her. Since the City charges applicants for those services there is very little increased financial outlay incurred by the City for the use of, and no financial outlay for citizens who wish to comment on a matter before the Hearing Examiner.
10	Limited Amendment	Tom Decker	The idea of city government is not to consolidate power in the hands of a few technocratic "experts", but instead to facilitate living and working for citizens of the city. Taking away the decision making process from the council, to me, is not helping the citizens of Westport. I would imagine even more of an financial outlay (in difficult times) by using a "professional" land use hearing examiner would be incurred by the city.	The City disagrees with the assertion the proposed amendment would consolidate power or in fact remove the decision making process from the City Council. The proposed limited amendment does not modify the current power and authority to hear shoreline matters which is limited to that which granted by the City Council, but moves it from the Planning Commission to the Hearings Examiner. The approval does not take away the decision making process from the City Council. In reality, the decisions as to what types of development, in what locations, and under what conditions are made by the City Council when they approve the Comprehensive Plan, Zoning Ordinance, and Local Shoreline Master Program. The Hearing Examiner is tasked with determining compliance with those regulations and must support his/her decision with findings as to how an application does or does not comply with those regulations and applicable state laws. The Hearing Examiner, or Planning Commission, although described as a

ITEM	Topic or Section Number (cite)	Commenter	Specific Comment	Local Government Response and Rationale
				decision, is in reality a determination of whether the application complies with the decisions of the City Council in establishing the applicable land use regulations and they are not authorized to make independent decisions or deviate from the laws, rules and regulations established by State and City Council.
11	Limited Amendment	Tom Decker	Citizens wishing to use their land should be able to engage with those elected to serve them. They should receive personal attention and assistance in achieving maximum use of their land within guidelines provided for land use. Exceptions to planning designations should be heard and decided on by the city council. Then if there is disagreement there should be a mediation process. And if continued disagreement, parties should enter into arbitration. And if situation is still un-resolvable, then parties should enter the court system. This process would greatly reduce the risk of incurring lawsuits which are a drain on the city budget.	The process the commenter suggests is not consistent with state laws which govern the process for review and decisions of applications for land use decisions.
12	Limited Amendment	Tom Decker	The city council may receive advisement from various sources on effective and legal land use planning. There is no need to be dependent upon one "expert" impacting the lives of Westport citizens in their land use endeavors.	The comment misunderstands the purpose of the individual or body that is authorized to review and make decisions on shoreline permits. The process of reviewing and making a final decision is frequently very complex and involves legal issues and processes. The ultimate goal of the system is to make a final decision based on the specifics of the application and its compliance with or failure to comply with applicable laws and regulations, and not to be delayed or decided based on technical flaws in the process or decision. The benefit of the use of a professional Hearing Examiner is not in their ability to make an independent decision based on their education and experience, but in their ability to use their education and experience to follow the legally established process and make their decision solely on the laws and regulations in effect at the time of application. In fact, it is normal for planning commissions and councils, because of their limited experience to rely on one or more legal or technical experts to guide them in the review and determination of permit applications. It is much more effective for the Council to rely on technical experts to assist them in establishing policies and codes totally separated from

ITEM	Topic or Section Number (cite)	Commenter	Specific Comment	Local Government Response and Rationale
				the pressure of a pending application which lends itself to much more effective policy development.
<b>13</b>	Limited Amendment	Tom Decker	The council (elected servants) should seek to serve the interests of their community. It should not be some hireling with absolute power over citizens concerning use of their land and with a citizen's only recourse being to enter judicial system... which is a money drain for all concerned.	Please see the comments concerning the Hearing Examiner's power and authority. This is a repeat of previous points.
<b>14</b>	Limited Amendment	Tom Decker	Do not approve this proposed limited amendment of the Westport shoreline master program. There needs to open communication with a myriad of ideas, within confines of existing acts, laws, ord., etc, between the people elected to office and those citizens they have pledged to serve in regards to land use for the city of Westport. DO NOT APPROVE LIMITED AMENDMENT.	The City agrees with the commenter's description of an excellent process. That process should take place initially during the development of the City's land use regulations, including the Shoreline Master Program, and should continue at a minimum during updates to those regulations. That process should not be limited to those times when an application is pending for a shoreline permit. Attempting to establish or modify regulations while a permit is pending leads to shortsighted policies at a minimum, and is potentially illegal and leads to unnecessary litigation. Both the applicant and the general public has the right to expect clear standards and regulations, and that a decision on an application will be made based on its compliance with or failure to comply with those previously established regulations. The proposed limited amendment will not affect the ability of the citizens to engage their elected officials in development of land use regulations but will increase the level of accuracy of permit decisions, both in compliance with those regulations and with the process required by state law. An added benefit is that it will free the elected officials to focus on a much more effective, open and engaging process of developing and updating regulations that is not tainted by opinions and pressures, either internal or external, of pending permit applications.